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Senator Ben Kieckhefer
10045 Goler Wash Court
Reno, NV 89521-3029

Dear Senator Kieckhefer:

You have asked this office the following questions relating to the term-limit provision of Article 15, Section 3 of the Nevada Constitution as it applies to the Reno City Council:

1. Under the term-limit provision, is a person who has served 12 years or more on the Reno City Council in an office that represents a specific ward eligible to be elected to the Council in an office that represents the city at large?
2. Under the term-limit provision, is a person who has served 12 years or more on the Reno City Council eligible to be elected as the Mayor even though the Mayor is a full voting member of the Council under the Reno City Charter?

In answering your questions, we first must review the Reno City Charter, which created the City of Reno and established its form of municipal government. Then we must interpret the term-limit provision and apply it to Reno's form of municipal government in light of several well-established rules of constitutional construction and long-standing principles of municipal law.

BACKGROUND

In Nevada, the State Constitution allows the Legislature to create cities through special acts. Nev. Const. art. 8, § 1; State ex rel. Rosenstock v. Swift, 11 Nev. 128, 142-45 (1876); W. Realty v. City of Reno, 63 Nev. 330, 350-51 (1946). Pursuant to that authority, the Legislature created the City of Reno through a special act which enacted the Reno City

court will look “beyond the language to adopt a construction that best reflects the intent behind the provision.” Sparks Nugget, Inc. v. State, Dep’t of Tax’n, 124 Nev. 159, 163 (2008). Thus, if there is any ambiguity, uncertainty or doubt as to the meaning of a constitutional provision, “[t]he intention of those who framed the instrument must govern, and that intention may be gathered from the subject-matter, the effects and consequences, or from the reason and spirit of the law.” State ex rel. Cardwell v. Glenn, 18 Nev. 34, 42 (1883). With these rules of construction in mind, we turn now to answering your specific questions.

1. Under the term-limit provision, is a person who has served 12 years or more on the Reno City Council in an office that represents a specific ward eligible to be elected to the Council in an office that represents the city at large?

Based on an examination of its plain language, the term-limit provision prohibits a person from being elected to a “local governing body” if the person has served 12 years or more “in that office.” Nev. Const. art. 15, § 3(2). The term-limit provision does not define the terms “local governing body” or “office.” When terms are not defined in a constitutional provision, the terms must be given their ordinary and commonly understood meaning. Ex parte Ming, 42 Nev. 472, 492 (1919); Seaborn v. Wingfield, 56 Nev. 260, 267 (1935). As further explained by the Nevada Supreme Court, “[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” Strickland v. Waymire, 126 Nev. Adv. Op. 25, 235 P.3d 605, 608 (2010) (quoting Dist. of Columbia v. Heller, 554 U.S. 570, 576 (2008)).

As commonly understood in the context of local governments, the term “governing body” is used to describe the body that is vested with the legislative power of the local government. See 4 Eugene McQuillin, The Law of Mun. Corps. §§ 13:1-13:4 (3d ed. rev. vol. 2011); 62 C.J.S. Mun. Corps. §§ 204 & 269 (2011). Thus, “[t]he generally accepted meaning of the phrase ‘governing authority’ or ‘governing body,’ in reference to the operation of city or county governments, is a council or board performing legislative functions.” Savage v. City of Atlanta, 251 S.E.2d 268, 271 (Ga. 1978) (quoting Humthlett v. Reeves, 90 S.E.2d 14, 18 (Ga. 1955)). Under most city charters, “[t]he governing body of a municipality is its city council.” City of Midwest City v. House of Realty, Inc., 198 P.3d 886, 899 (Okla. 2008).

Under the Reno City Charter, “[t]he legislative power of the City is vested in a City Council consisting of six Council Members and a Mayor.” Reno City Charter § 2.010. Because the Reno City Council is vested with the legislative power of the city, the City Council is the “local governing body” for purposes of the term-limit provision, and a person is prohibited from being elected to the City Council if the person “has served in that office, or at the expiration of his current term if he is so serving[,] will have served, 12 years or more.” Nev. Const. art. 15, § 3(2) (emphasis added).

On its face, the term-limit provision does not distinguish between an office that represents a specific ward or an office that represents the city at large. Rather, the term-limit provision applies whenever an officeholder has served the maximum number of years "in that office." As commonly understood, an "office" is "[a] position of duty, trust, or authority, esp. one conferred by a governmental authority for a public purpose." Black's Law Dictionary 1112 (7th ed. 1999). On a multi-member legislative body, each member of the body holds an office of equal rank. See Mason's Manual of Legislative Procedure § 52 (NCSL 2010) ("In public bodies the equality of members is presumed."); id. at § 120 ("The rights and duties of members of a legislative body are derived from and founded upon the absolute equality of the members.").

Therefore, on the Reno City Council, each Council Member holds an office of equal rank, regardless of whether the office represents a specific ward or represents the city at large. As a result, a Council Member who represents a specific ward does not hold an office which is different from a Council Member who represents the city at large. They both hold the same type of office—Council Member. Because each member of the Reno City Council holds the same type of office, it is the opinion of this office that the term-limit provision applies whenever a person has served the maximum number of years in the office of Council Member, regardless of whether the person has served in an office that represents a specific ward or the city at large, or any combination thereof.

It is also the opinion of this office that any contrary construction of the term-limit provision would violate the spirit of the provision and would lead to absurd and unreasonable results. The intent of voters who approved the term-limit provision may be determined by reviewing the ballot materials placed before the voters at the ratifying elections, including the ballot question, the ballot explanation and the arguments for and against passage. Nev. Mining Ass'n, 117 Nev. at 539; Pellegrini v. State, 117 Nev. 860, 876-77 (2001).

As clearly stated in the ballot explanation for the term-limit provision, "local governing body members would be limited to twelve (12) years." Nev. Ballot Questions 1994: Question No. 9 (Nev. Sec'y of State 1994); Nev. Ballot Questions 1996: Question No. 9 (Nev. Sec'y of State 1996). In addition, the argument in favor of the term-limit provision stated that "local governing body members will only be in office for a limited amount of time. . . . [and a] greater number of Nevadans would be allowed to serve as . . . members of local governing bodies." Id. Finally, in the Miller case, the Nevada Supreme Court explained that the intent behind the term-limit provision was "to preclude a person from serving . . . on a local governing body for more than 12 years." Miller, 124 Nev. at 584.

Given the clear intent of the voters who approved the term-limit provision, we believe a person who has served 12 years or more in office on a local governing body is prohibited from being elected to that local governing body again, regardless of whether the person's prior service was in an office that represents a specific ward or the local government at large, or any combination thereof. We also believe it would be unreasonable and absurd to interpret

the term-limit provision to allow a person to serve on a local governing body for 12 years in an office that represents a specific ward and for another 12 years in an office that represents the local government at large, when such an interpretation would clearly violate the spirit of the provision which was "to preclude a person from serving . . . on a local governing body for more than 12 years." Miller, 124 Nev. at 584.

Therefore, based on the plain language of the term-limit provision of Article 15, Section 3 of the Nevada Constitution and the clear intent of the voters who approved the provision, it is the opinion of this office that a person who has served 12 years or more in office as a Council Member on the Reno City Council is not eligible to be elected as a Council Member on that local governing body again, regardless of whether the person's prior service was in an office that represents a specific ward or the city at large, or any combination thereof.

2. Under the term-limit provision, is a person who has served 12 years or more on the Reno City Council eligible to be elected as the Mayor even though the Mayor is a full voting member of the Council under the Reno City Charter?

When creating local governments like cities, the Legislature may establish separate legislative and executive branches, but the Legislature is not constitutionally required to do so because the Nevada Constitution does not mandate separation of powers in local governments. See Nev. Const. art. 3, § 1; Sawyer v. Dooley, 21 Nev. 390, 396 (1893); State ex rel. Mason v. Bd. of County Comm'rs, 7 Nev. 392, 396-97 (1872); see also 56 Am. Jur. 2d Mun. Corps., Etc. § 128 (2010); 62 C.J.S. Mun. Corps. § 204 (2011). As a result, the traditional separation of powers found in the Federal Government and most state governments is not required in municipal governments. 2A Eugene McQuillin, The Law of Mun. Corps. §§ 10:3 & 10:6 (3d ed. rev. vol. 2006); 4 Eugene McQuillin, The Law of Mun. Corps. § 13.1 (3d ed. rev. vol. 2011).

Therefore, in enacting a city charter, the Legislature may authorize the mayor of the city to exercise legislative power by making the mayor a member of the city council. See 4 Eugene McQuillin, The Law of Mun. Corps. § 13:29 (3d ed. rev. vol. 2011); 56 Am. Jur. 2d Mun. Corps., Etc. § 128 (2010); 62 C.J.S. Mun. Corps. §§ 271 & 303 (2011). Under such circumstances, "both the council and mayor may constitute the 'governing body' in a statute defining the forms of municipal government." 56 Am. Jur. 2d Mun. Corps., Etc. § 128 (2010). Thus, the question of "[w]hether the mayor shall be regarded as a member of the legislative body depends upon the terms of the charter or law under which the municipality is organized." Russell v. Murphy, 58 P.2d 560, 563 (Okla. 1936); Savage v. City of Atlanta, 251 S.E.2d 268, 271 (Ga. 1978). When the charter explicitly makes the mayor a member of the city council, the mayor is to be regarded as a member of the city council for all purposes. 4 Eugene McQuillin, The Law of Mun. Corps. § 13:29 (3d ed. rev. vol. 2011); Dafoe v. Harshaw, 26 N.W. 879, 880 (Mich. 1886); Griffin v. Messenger, 86 N.W. 219, 219 (Iowa 1901); Harrison v. Campbell, 254 S.W. 438, 439 (Ark. 1923).

As discussed previously, the Reno City Charter expressly provides that "[t]he legislative power of the City is vested in a City Council consisting of six Council Members and a Mayor." Reno City Charter § 2.010. The charter also expressly provides that the Mayor "[s]hall serve as a member of the City Council and preside over its meetings," and that the Mayor "[i]s entitled to vote and shall vote last on all roll call votes." Reno City Charter § 3.010. Thus, under the Reno City Charter, the Mayor is explicitly made a full voting member of the City Council.

Furthermore, although the Mayor serves as the head of the city government for all ceremonial purposes, the Mayor does not serve as the city's chief executive officer, and the Mayor does not perform any administrative duties. Reno City Charter §§ 3.010 & 3.020. Instead, the City Council appoints a city manager to serve as the chief executive and administrative officer of the city government, and the city manager is responsible to the City Council for the proper administration of all affairs of the city. Reno City Charter §§ 1.090 & 3.020.

In light of the specific provisions of the Reno City Charter and Reno's form of municipal government in which the Mayor is explicitly made a full voting member of the City Council, we believe the Mayor is to be regarded as a member of the City Council for all purposes, including application of the term-limit provision. As a full voting member of the City Council, the Mayor exercises legislative power to the same degree as any other Council Member, and the Mayor holds an office on the City Council that is of equal rank to the office of Council Member. As a result, given that the Mayor serves as a Council Member on Reno's local governing body, it is the opinion of this office that the office of Mayor is subject to the term-limit provision to the same extent as the office of Council Member on the Reno City Council.

In reaching this conclusion, we note that former Attorney General Frankie Sue Del Papa came to the same conclusion in an Attorney General's opinion issued on August 9, 1996, when the term-limit initiative was pending on the ballot for the second time. Op. Nev. Att'y Gen. No. 96-23 (Aug. 9, 1996). In that opinion, the Attorney General stated that:

An examination of the instrument creating each city is necessary before a conclusion can be reached as to whether a mayor would be subject to term limits. If the creating instrument indicates the mayor's main function is to be an administrator for the city, and the mayor does not exercise legislative power as a member of the city council, then the mayor would not be subject to term limits. If, on the other hand, the mayor functions as a member of the city council, a governing body, then term limits would apply to that position as well as to the other members of the city council.

Op. Nev. Att'y Gen. No. 96-23 (Aug. 9, 1996) (emphasis added).

With regard to the City of Reno, given that the Mayor is explicitly made a full voting member of the City Council, it is the opinion of this office that under the term-limit provision, a person who has served 12 years or more in office as a Council Member on the Reno City Council is not eligible to be elected as the Mayor because the Mayor is a member of Reno's local governing body.

CONCLUSION

Based on the plain language of the term-limit provision of Article 15, Section 3 of the Nevada Constitution and the clear intent of the voters who approved the provision, it is the opinion of this office that a person who has served 12 years or more in office as a Council Member on the Reno City Council is not eligible to be elected as a Council Member on that local governing body again, regardless of whether the person's prior service was in an office that represents a specific ward or the city at large, or any combination thereof.

Furthermore, based on the specific provisions of the Reno City Charter and Reno's form of municipal government in which the Mayor is explicitly made a full voting member of the City Council, it is the opinion of this office that under the term-limit provision, a person who has served 12 years or more in office as a Council Member on the Reno City Council is not eligible to be elected as the Mayor because the Mayor is a member of Reno's local governing body.

If you have any further questions regarding this matter, please do not hesitate to contact this office.

Very truly yours,

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Legislative Counsel

By 

Kevin C. Powers
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